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Office of the Secretary
Federal Communications Commission
445 12th Street SW
Room TW-A325
Washington, DC 20554

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JAN - 8 2003

Federal Communications Commission
Office of the Secretary

Re: CG Docket No. 02-278, CC Docket No. 92-90.FCC 02-250

Dear Ms. Dortch:

I am writing with comments on the above captioned matter, the FCC's proposed rules to implement the Telephone Consumer Protection Act of 1991 ("TCPA").

I acknowledge that I am filing these comments beyond the deadline already extended by the FCC. Nevertheless, I only heard about this rulemaking recently and I hope that the Commission will show leniency in considering the comments of a public citizen that are only a few weeks late.

General View

When I am at home, I want to be left alone. Telemarketers should not be permitted to disturb the quiet of my home. If I want to engage in a commercial transaction, I will go to the store or surf the internet. It will be my choice. A telemarketer who calls me during dinner makes it his choice when I will engage in commercial activity, and I should not be denied such choice when I am in the sanctity of my own home. By going to my home, I have spoken definitively on how I wish to be treated by everyone in the commercial world: I want to be left alone. If I cannot choose to be free of commercial hassles when I am in my home, where else am I supposed to go for such freedom?

Let us never forget: if a company really wants to let me know about something, it can send such information in the mail. I and other consumer advocates are not proposing to deny a company the right to send its message; we seek only to regulate the means of that delivery. Telemarketers, by forcing us to answer their phone calls, deny us the freedom from disturbance within our own homes. They wrap the constitution around themselves as they invade our homes, claiming that telemarketing is protected commercial speech. A better reading of the Constitution is that a citizen should be free to enjoy the peace and quiet of his/her own home. All we are asking companies to do is to slip their message through the mail slot.

I strongly support the FTC's recent decision to establish a national do-not-call registry, and I encourage the FCC to do everything in its power to cooperate with the FTC to promote the establishment and efficient working of such a registry.

Specific Comments

Below I respond to various comments and questions posed by the FTC in its proposal (67 *Fed. Reg.* 62667 (October 8, 2002)). I will address them in the order in which such issues were raised in the proposal, introducing each with the page of the *Federal Register* on which it appeared.

62669, paragraph 2, re: *Central Hudson* – I believe a national do-not-call registry (operated jointly or separately by the FTC and/or FTC) meets the intermediate scrutiny test of *Central Hudson*. While the activity of a telemarketer may not be illegal or misleading (the first prong), I believe that the second prong – whether the government has a substantial interest in regulating the speech – is satisfied. The basic idea of a do-not-call registry is that a private citizen must actively inform the registry that he/she does not wish to receive telemarketing calls. In essence, the citizen is asking the federal government to act as his/her agent to stop the incoming calls. The fact that the federal government has been appointed agent in this instance is testament to the fact that no other agent (such as company- or industry-run do-not-call registries) have not proved effective in stopping the deluge of telemarketing calls. Responding to explicit citizen choice, especially concerning the privacy of the home, is a compelling government interest.

A national do-not-call registry satisfies the third prong (the restriction on commercial speech directly and materially advances the government interest) because the government is doing precisely what the citizens are asking it to do, as their agent: stop the annoyance of telemarketing calls. Furthermore, each citizen must affirmatively opt in to the registry. Therefore, the ban on telemarketing calls will extend only to those who have specifically requested such a ban. This satisfies the fourth prong (narrowly tailored to advance the government interest).

62669, paragraphs 3-6, re company-specific do-not-call lists – These lists are not sufficient to protect citizen privacy. The number of potential telemarketers is limitless. A private citizen who wants no disturbances in his/her home simply cannot get his/her name on every company-specific list. This throws the burden on telemarketing prevention on to the consumer. The consumer should not have the burden of keeping his/her home free from disturbance. Instead, the burden should be on the telemarketing industry to demonstrate why the intrusion is justified – and I see no way for them to meet that burden.

62669, paragraph 4, "We recognize that some consumers may feel that receiving product and service information by telephone helps them reap the benefits of a competitive marketplace." – This is a grotesque statement that appears to have been cribbed from some piece of telemarketing industry propaganda. The utility of the information does not justify its intrusion into the home. Consumers by and large know where they need to go to find information about things – by calling the store, surfing the internet, *etc.* It is utterly inappropriate for a telemarketer to call someone at home and for the telemarketer to tell the citizen what he/she ought to know. Aside from the nuisance factor, let us also look at the cost/benefits of such intrusive calls. For every telemarketing

call received where a consumer obtains a useful bit of information, how many calls did he/she receive that were simply a nuisance? In my particular case, I have never received a piece of useful information from a telemarketing call, out of hundreds if not thousands of telemarketing calls. That is a very poor ratio, certainly so poor as not to justify the intrusion into my home.

62669, paragraph 7, registering for company-specific lists – As previously stated, I strongly support a national do-not-call registry. However, to the extent that such a registry cannot or will not be implemented, I strongly support making company do-not-call registries as robust as possible. To that end, companies should be required to provide a toll-free number and a website to allow consumers to withdraw their names, and companies should be required to display the availability of withdrawal as prominently as possible (otherwise the right to withdraw, being invisible, will be non-existent).

62670, paragraph 10, re "established business relationship" – The "established business relationship" concept should be revised to make it as restrictive as possible or else eliminated entirely. Just because I bought something from a company in the past should not give them the freedom to disturb me in my home. I frequently get calls from the newspaper to which I subscribe or from the credit card companies that have issued me cards. They are just as much of a hassle as companies I have never dealt with before. If I want more newspapers or more credit cards, I know where to ask. There is no need to disturb me during dinner. Please make them stop.

62670, paragraph 11-12, re network technologies – The fact that there exist technologies that help citizens screen out telemarketing calls does not mean that the FCC should be any more lenient with the telemarketing industry. It should be remembered that such technologies (caller ID, *etc.*) cost money. Citizens should not have to shoulder additional financial burden to protect the peace and privacy of their own homes. Why should I have to pay more money to the phone company to eat dinner in peace? The problem should be stopped at its source, *i.e.* by prohibiting the call in the first place.

62670, paragraph 12, "should the Commission require telemarketers to transmit the name and telephone number of the calling party, when possible, or prohibit them from blocking or altering the transmission of such information?" – Most definitely yes. And remove the "when possible" – telemarketers should be required to use phone systems that always identify who they are. They should never be allowed to hide behind the excuse that "my phone company can't identify me."

62671, paragraph 15, "We specifically seek comment on the practice of using automatic telephone dialing equipment to dial large blocks of telephone numbers in order to identify lines that belong to telephone facsimile machines. Should the Commission adopt rules to restrict this practice?" – Yes. The practice should be banned in its entirety. Its nuisance quotient greatly outweighs any commercial purpose it may serve.

62672, paragraph 19 – The FCC should determine that, if a predictive dialer abandons the call before the telemarketer identifies himself, the telemarketer *is* violating the Telemarketing Sales Rule.

62672, paragraph 21, "Would it balance the interests of consumers and telemarketers more effectively for us to clarify that calls containing offers of free goods or services are prohibited without the prior express consent of the called party?" – Yes. Such calls should be prohibited.

62673, paragraph 24-25, re established business relationship – This exception for the telemarketers should be as restrictive as possible, if not completely eliminated. The only sort of "established business relationship" that should allow a telemarketer to call a particular citizen at home *is* if that citizen has clearly and affirmatively provided consent for such calls. Merely having purchased something from that company is not the type of "established business relationship" that should justify intrusion of the home. Under the existing definition of the term, it can already be interpreted that the "relationship" is "terminated" by the mere fact of the culmination of the transaction. Let us say I buy a computer from Company X. If I want any more computer-related items, I know where to go. I do not want Company X disturbing me at home, and the fact that I bought a computer from Company X should not give Company X that license.

62673, paragraph 24, re small businesses – It should not matter whether the telemarketer is a big business or a small business; the intrusion *is* equally unwanted

62673, paragraph 26 – As previously stated, I strongly support a national do-not-call registry. However, to the extent that such a registry cannot or will not be implemented, I strongly recommend that the only permissible hours for calls be as follows: M-F, 9:00 a.m. to 9:00 p.m.; Sat and Sun, 12:00 noon to 9:00 p.m. On workdays, I sometimes sleep past 8:00 a.m. On weekends, I sometimes sleep in very late, often past noon. **A** telemarketer should not be permitted to deny me the right to catch up on my sleep. This is my home we are talking about. If I cannot get extra sleep there, where else am I going to get it? The telemarketer would not like it very much if I woke him/her up to ask a question about the telemarketer's product. I and every other citizen deserve the same consideration

62673, paragraph 27 – All unsolicited faxes should be banned. Even if it is difficult to place a value on a citizen's privacy at home, the same does not apply with fax machines. Paper and toner has an easily quantifiable cost. Companies that send unsolicited faxes should not be permitted to waste the paper and toner belonging to the recipient.

62673, paragraph 28, re "prior express invitation or permission" – This term should be interpreted as narrowly as possible, *i.e.* the person being solicited by fax has clearly, affirmatively, and unequivocally has said something to the effect that, "I wish to receive a fax that advertises your product or service." Merely distributing or publishing one's fax number should absolutely not be deemed "prior express invitation or permission".

62674, paragraph 29, re "established business relationship" – This exception should be as restrictive as possible, if not completely eliminated. The only sort of "established business relationship" that should allow a company to fax someone is if the recipient has clearly and affirmatively provided consent for such faxes. Merely having purchased something from that company is not the type of "established business relationship" that should justify the waste of fax paper and toner.

62674, paragraph 30, re fax broadcasters – Fax broadcasting should be prohibited, and the FCC should take every action within its power to make it so.

62674, paragraph 34, "should wireless telephone numbers . . . be considered 'residential telephone numbers' for the purposes of the Commission's rules on telephone solicitations?" – Yes. A telemarketing call to a landline is just as unwanted and disruptive as a call to a cell phone. Even if the FCC places no value on the sanctity of the home and allows telemarketers to continue to bother us in our homes, the FCC must acknowledge that unwanted calls to cell phones in most cases impose costs on the recipient of such calls. Therefore, they should be banned.

62676, paragraph 45 – As noted previously, I strongly support the establishment of a national do-not-call registry. I urge the FCC to combine efforts with the FTC to create a national do-not-call registry that covers as many potential telemarketers as possible.

62679, paragraphs 61-66, re impact on small businesses – No special treatment should be given to small businesses under any rule that the FCC may adopt. A telemarketing call from a large company is the same as a telemarketing call from a small company. Both are equally damaging to the peace and privacy of the citizen's home and, as such, should be prohibited (if the citizen so desires).

62680, paragraph 67, re cost and burdens of national do-not-call registry – The telemarketing industry should shoulder the entire burden of the registry. It should be illegal for a telemarketing firm to make any calls to persons on the list. The FCC and FTC would then charge for access to the list. Would telemarketing firms attempt to pass these costs on to consumers? Absolutely, but so what. These additional costs will make the products and services of telemarketers less competitive, which should result in fewer telemarketing sales and, one hopes, fewer telemarketing companies. This is a good result. Hopefully, these firms will discover more honorable and less intrusive means to market their products and cease to telemarket. If there were no more telemarketing, there would no longer be a need for the registry.

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I appreciate the opportunity to comment on the FCC's proposed rulemaking

Very truly yours,
Michael J. Gaw
Alexandria, VA